

Date

20<sup>th</sup> March

20/18/

- (1) The Council of the City of York
- (2) Spark York C.I.C.

Lease

of

17 – 21 Piccadilly, York

Assistant Director of Legal and Governance  
West Offices,  
Station Rise,  
York,  
YO1 6GA.  
Ref: LPR1.8355

**LR1. Date of lease**

20<sup>th</sup> March

20/03/17

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**  
NYK361918

**LR2.2 Other title numbers**

**LR3. Parties to this lease**

**Landlord**

The Council of the City of York  
West Offices  
Station Rise  
York  
YO1 6GA

**Tenant**

Spark York C.I.C.

**LR4. Premises**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The premises described in clause 1

**LR5. Prescribed statements etc.**

**LR6. Term for which the Premises is leased**

The term as specified in this lease in clause 1.

**LR7. Premium**

None.

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Premises, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Premises**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Premises**

The rights specified in Part 1 of the First Schedule.

**LR11.2 Easements granted or reserved by this lease over the Premises for the benefit of other Premises**

The rights specified in Part 2 of the First Schedule.

**LR12. Estate rentcharge burdening the Premises**

None.

THIS LEASE is made the 20<sup>th</sup> day of March 2018

BETWEEN

(1) The Council of the City of York of West Offices, Station Rise, York, YO1 6GA ("the Landlord") and

(2) Spark York C.I.C. (incorporated and registered in England and Wales with company number 10071777 whose registered office is at 6 Lindley Street, York, YO24 4JF ("the Tenant")

and the provisions that follow have effect subject to the provisions contained, and terms used, in clauses LR1 to LR12

**1. Definitions and interpretation**

1.1 In this lease unless the context otherwise requires the terms defined in this clause and in the Particulars shall have the meanings specified:

"Account Date" means each of the following respective dates:

- (i) the date falling 12 months from the Term Commencement Date;
- (ii) the date falling 24 months from the Term Commencement Date
- (iii) 30 June 2020

"Additional Rent" means in each Profit Period a sum equal to 30% of the Profit for that particular Profit Period

"Basic Rent" means:

- (i) £13,333.33 in respect of the period of 12 months from and including the Term Commencement Date
- (ii) £13,333.33 in respect of the period of 12 months from and including the 1<sup>st</sup> anniversary of the Term Commencement Date
- (iii) £13,333.34 in respect of the period from and including the 2<sup>nd</sup> anniversary of the Term Commencement Date until and including 30<sup>th</sup> June 2020

"Rent Payment Dates"	the date falling 21 days after each respective Account Date throughout the Term
"Business Day"	means any day from Monday to Friday (inclusive) other than Christmas Day, Good Friday and any statutory Bank Holiday in England
"Conducting Media"	all or any sewers drains conduits gutters channels watercourses pipes cables wires ducts and mains and apparatus associated therewith and all equipment and fittings ancillary thereto forming part of or serving the Premises
"Containers"	a shipping container or containers to be installed at the Premises as part of the Development
"Development"	the installation and use of shipping containers on the Premises for provision of retail services including sale of food, alcohol, office accommodation with ancillary meeting room, performance space and public workspace in accordance with planning permission reference 17/00274/FUL granted on 12 May 2017
"Expenses"	the amount calculated in accordance with paragraph 3 of the Second Schedule
"Gross Income"	the amount calculated in accordance with <i>paragraph 2</i> of the Second Schedule
"Profit"	<p>the amount arising from the following calculation:</p> $A = B - C$ <p>where:</p> <p>A = Profit for the relevant Profit Period</p> <p>B = Gross Income for the relevant Profit Period</p> <p>C = Expenses for the relevant Profit Period</p>
"Profit Periods"	<p>each of the following successive periods:</p> <p>the period beginning on the date of this lease and ending on the day before the next Account Date; and</p> <p>the period beginning on each Account Date and ending on the day before the following Account Date. The day beginning on the last Account Date and ending on the last day of the Term.</p>
"Group Company"	a company which is either the holding company of the Tenant or a wholly-owned subsidiary of the Tenant or

	of the Tenant's holding company (as both expressions are defined in section 736 of the Companies Act 1985)
"Guarantor"	means any guarantor of the tenant covenants of this lease including a guarantor who has entered into an authorised guarantee agreement
"Insured Risks"	fire lightning earthquake explosion aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom riot civil commotion malicious damage storm or tempest bursting or overflowing of water tanks apparatus or pipes flood and impact by road vehicles subsidence heave and such other risks or insurance as may from time to time be reasonably required by the Landlord and notified to the Tenant
"Interest Rate"	a yearly rate two per cent above the Basic rate of HSBC Bank plc (or such other rates by reference to which London clearing banks decide their own rates of interest)
"Landlord"	includes the person for the time being entitled to the reversion immediately expectant on the determination of the Term
"Landlord's Premises"	the property shown edged blue on the Plan and any other property adjoining the Premises from time to time owned by the Landlord
"Plan"	the plan annexed to this lease
"Planning Acts"	"the Consolidating Acts" as defined in the Planning (Consequential Provisions) Act 1990 and any other legislation relating to town and country planning in force from time to time
"Permitted Lease"	the lease of a Unit in substantially the same for as annexed hereto at Appendix 2 but with: <ul style="list-style-type: none"> <li>(a) such reasonable non-material amendments as may be required by the Tenant; and</li> <li>(b) a monthly rent at no less than £8.33 per square metre</li> </ul>
"Permitted Part"	one or more areas shown edged in green and numbered 1 to [NUMBER] on Plans 2 and 3
"Permitted Subletting"	a subletting of a Permitted Part in accordance with clause 3.17.5
"Permitted Use"	use for the purposes of the Development

"Premises"	17 – 21 Piccadilly, York being the property shown edged red on the Plan
"Rents"	the Additional Rent and the Basic Rent
"Shared Space"	those parts of the Premises which are capable of being occupied by more than one party
"Subjections"	the matters affecting the Premises including any matters contained in or referred to in the registers of title for the Landlord's title number NYK361918
"Term"	a term of years from the Term Commencement Date until and including 30 June 2020 including where applicable any extension of the Term
"Term Commencement Date"	the date of this lease
"Tenant"	the person in whom the Term is vested for the time being
"VAT"	value added tax and any other tax of a similar nature
"Yearly Rent"	the Basic Rent and the Additional Rent

- 1.2 The expression "the Premises" includes
  - 1.2.1 all additions and improvements to the Premises
  - 1.2.2 all Conducting Media in on under or over the Premises and exclusively serving the Premises
  - 1.2.3 in the absence of any provision to the contrary any part of the Premises
- 1.3 any covenant by the Tenant not to do any act or thing shall include an obligation not to permit or suffer such act or thing to be done
- 1.4 reference to any right of the Landlord to have access to or entry upon the Premises shall be construed as extending to all persons properly authorised by the Landlord including agents professional advisers contractors workmen and others
- 1.5 any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments orders notices regulations directions bye-laws permissions and plans for the time being made issued or given thereunder or deriving validity therefrom
- 1.6 the title headings appearing in this lease are for reference only and shall not affect its construction

- 1.7 any reference to a clause or schedule shall mean a clause of or schedule to this lease

## **2. Demise**

The Landlord hereby demises to the Tenant with full title guarantee the Premises together with (in common with the Landlord and others authorised by the Landlord) the rights specified in Part 1 of the First Schedule to this lease excepting and reserving to the Landlord and its successors in title and assigns and other the owners and occupiers of the Landlord's Premises and all others authorised by it or them the rights specified in Part 2 of the First Schedule to this lease to hold the same unto the Tenant for the Term subject to the Subjections yielding and paying therfor:

- (a) the Basic Rent every year and proportionately for any part of a year
- (b) as further rent the Additional Rent
- (c) VAT on the Basic Rent and the Additional Rent to the extent lawfully demanded by the Landlord

the Basic Rent and the Additional Rent to be paid on the Rent Payment Dates

## **3. Tenant's covenants**

The Tenant hereby covenants with the Landlord as follows:

### **3.1 Rents**

- 3.1.1 To pay the Basic Rent on the Rent Payment Dates whether demanded or not
- 3.1.2 To pay the Additional Rent on the Rent Payment Dates whether demanded or not in accordance with the provisions of the Second Schedule
- 3.1.3 (Subject to any statutory right) not to exercise any legal or equitable rights of set-off, deduction, abatement or counterclaim whatsoever to reduce its liability to pay the Rents

### **3.2 Outgoings**

To pay and discharge all existing and future rates taxes duties assessments charges levies and outgoings whatsoever whether parliamentary local or otherwise including all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Premises other than:

- (a) any tax in respect of rents and other payments under this lease (other than VAT or other tax thereon intended by statute to be payable by the Tenant)
- (b) any tax or levy in respect of the grant of and arising solely by reason of this lease (and not by reason of the combined effect of the grant of this lease and of some other act or omission on the part of the Tenant) and



- (c) any tax in respect of any dealing with the reversion expectant on the Term not arising by reason of some act or omission on the part of the Tenant

If any such costs, rates, taxes or other impositions and outgoings costs are charged in respect of the Premises together with other Premises (including the remainder or any other part of the Site), the Tenant shall pay a fair proportion (determined conclusively by the Landlord except as to questions of law and in the absence of any manifest error) of the total.

### **3.3 VAT**

- 3.3.1 any payment or other consideration to be provided to the Landlord is exclusive of VAT and the Tenant shall (subject to delivery by the Landlord of a valid VAT invoice in respect thereof) in addition pay any VAT chargeable on the date the payment or other consideration is due

- 3.3.2 any obligation to reimburse or pay the Landlord's expenditure extends to irrecoverable VAT on that expenditure and the Tenant shall also reimburse or pay such VAT

### **3.4 Interest on overdue payments**

- 3.4.1 If any of the Rents (whether or not formally demanded), or any other sum of money, payable by the Tenant under this lease has not been paid:

- (i) in the case of the Basic Rent (and any VAT), on the date when payment is due; and
- (ii) in the case of the Additional Rent (and any VAT), on the date when payment is due;

the Tenant shall pay interest calculated on a daily basis on the unpaid sum at the Interest Rate for the period from and including the date when payment:

- (a) was due (in the case of the Basic Rent and any VAT); or
- (b) was due (in the case of the Additional Rent and any VAT); or
- (c) was demanded (in the case of any other or sums);

until the date the Landlord receives payment (both before and after any judgement).

- 3.4.2 If the Tenant is in material breach of any obligation in this Lease and the Landlord refuses to accept payment of the Rents so as not to waive that breach, the Tenant shall pay interest on such sum at the Interest Rate for the period from and including the date when payment:

- (a) was due; or
- (b) would have been due if demanded on the earliest date on which it could have been demanded;

to the date when the Landlord accepts payment. This obligation is without prejudice to any other rights, remedy or power available to the Landlord. If it is subsequently

established that the Tenant is not in material breach of obligation under this Lease, no interest shall be due on any Rents which the Landlord has refused to accept.

### **3.5 Repair**

- (a) To repair the Premises and keep them in good and substantial repair and condition.
- (b) To keep the Premises in a clean and tidy condition;
- (c) To make sure all rubbish is stored properly and remove all rubbish from the Premises as often as is reasonably required.

### **3.6 Decoration**

As often as reasonably required by the Landlord (acting reasonably) the Tenant shall clean, paint or apply such other appropriate finish to the Containers but not such that this work is carried out more than once in any twelve month period unless reasonably required by the Landlord.

### **3.7 Inspection and entry**

- 3.7.1 to permit the Landlord at all reasonable times on reasonable prior notice (or at any time without such notice in case of emergency) to enter the Premises to view their condition and if any defect disrepair or unauthorised alteration is found for which the Tenant is liable then upon service of written notice by the Landlord specifying these to commence and complete the works properly required by that notice within a reasonable period after any such notice (or forthwith in case of emergency).
- 3.7.2 if the Tenant does not comply with the notice within a reasonable time the Landlord may enter into the Premises and execute such works and the Tenant shall pay to the Landlord as a debt and on demand all expenses reasonably and properly incurred in so doing

### **3.8 Access of Landlord**

- 3.8.1 to permit the Landlord at all reasonable times on reasonable prior notice (or at any time without such notice in the case of emergency) to enter upon the Premises for all or any of the following purposes namely:
  - (a) taking inventories of the landlord's fixtures and fittings (if any)
  - (b) effecting decorations repairs maintenance renewal extension alteration tests or other works to or on any part or parts of the Landlord's Premises or tests to the Premises or any matters acts or things which may be requisite under or pursuant to the provisions of this lease or to comply with any Act of Parliament statutory instrument order building regulation or other regulation or local bye-law in relation to the Premises or any part thereof but only to the extent that the same cannot reasonably be carried out without the Landlord securing access to the Premises
  - (c) inspecting cleansing maintaining testing repairing altering laying fixing constructing renewing re-laying and connecting up to any Conducting Media used or to be used for or in connection with any part or parts of the Landlord's Premises

- (d) complying with the Landlord's obligations under this lease
- (e) exercising the rights excepted and reserved to the Landlord by Part 2 of the First Schedule
- (f) enabling prospective purchasers or tenants of the Landlord's interest in the Premises to view the Premises or

and for all or any such purposes to erect scaffolding and/or other like apparatus and/or ladders and/or cradles and other like appliances or apparatus upon the Premises or any part thereof or outside the Premises

### **3.9 Yielding up**

To yield up the Premises at the expiry or sooner determination of the Term in a state of repair and condition consistent with the Tenant's covenants in this lease

### **3.10 Alterations**

- 3.10.1 not to make any alteration or addition to the structure or external appearance of the Premises save that any reasonable and necessary works undertaken to construct the Development are hereby permitted by the Landlord
- 3.10.2 not to make any other alteration to the Premises without the Landlord's prior written consent (such consent not to be unreasonably withheld).
- 3.10.3 not to erect or install in or on the Premises any plant machinery or equipment (other than that authorised by this lease) the operation or use of which would have an adverse effect on the Premises or the Landlord's Premises.
- 3.10.4 not to load or use the Premises in any way which would cause strain damage or interference to the Premises or any Conducting Media at or serving the Premises or the Landlord's Premises

### **3.11 Signs**

Not to erect any signs, notices, advertisements, lettering or announcements of any kind, which can be seen from outside the Premises, without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed).

### **3.12 Reinstatement**

Before the end of the Term:

- (a) to remove any signs and all tenant's fixtures and fittings, furniture and belongings and to repair to the Landlord's reasonable satisfaction all damage caused by removing them

- (b) (save to the extent reasonably required in writing by the Landlord) to remove and make good any alterations or additions made to the Premises during the Term or any prior period of occupation by the Tenant or its predecessors including removing the Containers on the Premises, and to reinstate the Premises in a good and workmanlike manner to the Landlord's reasonable satisfaction

### **3.13 Compliance with requirements of statute local and other authorities**

3.13.1 To observe and perform all requirements of and to do and execute or cause to be done and executed all such works and things as under or by virtue of any Acts of Parliament local Acts building regulations or bye-laws already or hereafter to be passed and rules and regulations thereunder now are or shall or may be directed or required to be done or executed upon or in respect of the Premises or any part thereof or in respect of the user thereof whether by the owner landlord tenant or occupier thereof and at all times during the Term to indemnify and keep indemnified the Landlord against all claims demands expenses and liability in respect thereof

3.13.2 Not to permit or suffer to be done or omitted any matter in the contravention of the statutes statutory instruments rules orders and regulations for the time being in force relating to navigation or any orders directions or notices made or given thereunder and in particular to indemnify and keep indemnified the Landlord against all actions proceedings costs expenses claims and demands in respect thereof insofar as any such actions are in respect of a breach by the Tenant

### **3.14 Planning**

3.14.1 at all times during the Term to comply in all respects with the provisions and requirements of the Planning Acts and to indemnify and to keep the Landlord indemnified against all liability whatsoever including costs and expenses in respect of such matters and to produce to the Landlord within ten days of receipt by the Tenant of notice thereof any notice order or proposal made given or issued under or by virtue of the Planning Acts affecting or relating to the Premises

3.14.2 not without the Landlord's previous consent to:

- (a) apply for nor to permit any person deriving title under the Tenant to apply for any planning permission relating to the Premises or to any part thereof or to the use thereof or any part thereof and in the event of the Landlord attaching any reasonable conditions to such consent as aforesaid not to apply or permit any application for any such planning permission save in accordance with the said conditions or

- (b) implement or permit to be implemented any planning permission

3.14.3 immediately after the grant thereof to supply to the Landlord a copy of any such planning permission and the application and any correspondence or drawings incidental or relating thereto.

### **3.15 Permitted use**

Not to use the Premises otherwise than for the Permitted Use.

### **3.16 Restrictions on use**

- 3.16.1 not to store on the Premises any petrol or other inflammable explosive or combustible substance except for liquefied petroleum gas in a safe and appropriate manner so far as is necessary in connection with the use of the Premises for the Permitted Use
- 3.16.2 not to do on the Premises anything (which shall include but not be limited to the playing and amplification of music) which may be or become a nuisance or annoyance or cause damage or inconvenience to the Landlord or the tenants or occupiers of any adjoining or neighbouring Premises provided that the proper and reasonable use of the Premises for the Permitted Use in accordance with planning permission and licensing requirements and conditions for the Development shall not be a breach of this clause
- 3.16.3 not to use the Premises or exercise any of the rights granted to the Tenant by Part 1 of the First Schedule for any dangerous noxious noisy or offensive trade business or activity nor for any illegal or immoral purpose
- 3.16.4 not to hold or permit or suffer to be held on the Premises any sale by auction or political meeting
- 3.16.5 not to allow to pass into the Conducting Media any noxious or deleterious effluent or other substance which might cause any obstruction or damage to the Conducting Media and to clear and make good any obstruction or damage caused
- 3.16.6 not to leave any refuse outside the Premises except at such times and in such manner as accord with the arrangements for the collection of refuse from the Premises by the local authority

### **3.17 Alienation**

#### **3.17.1 General restriction**

Not to assign, charge, sublet, part with possession or share the occupation of, permit any person to occupy, nor create any trust in respect of the tenant's interest in, the whole or any part of the Premises save as otherwise permitted by this clause.

#### **3.17.2 Subletting of whole**

Subject to clause 3.17.4 not to sublet the whole or any part of parts of the Premises unless:

- (a) if the Landlord so reasonably requires, the Tenant obtains a guarantor reasonably acceptable to the Landlord for any proposed subtenant
- (b) the sublease complies with those provisions of clause 3.17.3 which relate to sublettings of the whole
- (c) the Landlord's prior written consent is obtained (such consent not to be unreasonably withheld)

#### **3.17.3 Sublettings generally**

Subject always to clause 3.17.4:

- (a) Not to sublet the whole of the Premises at a fine or premium or at a monthly rent which is less than £8.33 per square metre.
- (b) Before the grant of any permitted sublease, to procure that the subtenant enters into the following direct covenants with the Landlord:-
  - (i) not to assign or charge any part of the premises to be sublet
  - (ii) not to dispose of or share the occupation of or permit any person to occupy the whole or any part of the premises to be underlet save by way of an assignment of the whole of the premises to be sublet
  - (iii) not to assign the whole of the premises to be sublet without the prior written consent of the Landlord (such consent not to be unreasonably withheld);
  - (iv) to perform and observe all the tenant's covenants contained in:
    - (A) this Lease (other than for the payment of the rents) so far as the same are applicable to the premises to be sublet; and
    - (B) the permitted sublease

and that any guarantor for the subtenant guarantees to the Landlord that the subtenant shall comply with such covenants and indemnify the Landlord against any breach.

- (c) Every permitted sublease shall contain:
  - (i) provisions for the review of the rent payable under it on an upwards only basis corresponding both as to terms and dates with the rent review provisions in this Lease;
  - (i) a covenant by the subtenant (which the Tenant covenants to enforce) prohibiting the subtenant from doing or allowing any act or thing on, or in relation to, the premises sublet inconsistent with, or in breach of this Lease;
  - (ii) a condition for re-entry on breach of any covenant by the subtenant;
  - (iii) the same restrictions as to assignment, subletting, charging and parting with or sharing the possession or occupation of the sublet premises, and the same provisions for direct covenants and registration, as are contained in this lease (with any necessary changes) and
  - (iv) provisions excluding from the sublease the security of tenure provisions of the Landlord and Tenant Act 1954.

#### 3.17.4 Subletting of a Permitted Part

Notwithstanding the provisions of clause 3.17, the Tenant may without the consent of the Landlord grant a Permitted Lease and the provisions of clauses 3.17.2, and 3.17.3(b) and (c) shall not apply to a Permitted Lease.

### 3.17.5 Occupation by group companies

The Tenant may permit the whole or any part of the Premises to be occupied by any company which is, for the time being, a Group Company of the Tenant subject to:

- (a) the Tenant giving to the Landlord written notice of such occupation and the name of the Group Company concerned within five (5) Business Days after the occupation begins;
- (b) the Tenant and that Group Company remaining in the same relationship whilst such occupation lasts; and
- (c) such occupation not creating a relationship of landlord and tenant between the Tenant and that Group Company.

### 3.17.6 Management of sublettings

The Tenant shall:

- (a) enforce the performance and observance of the covenants by the subtenant contained in any permitted sublease
- (b) not, at any time, either expressly or by implication, waive any breach of them;
- (c) procure that the rent under any permitted sublease is reviewed in accordance with its terms;
- (d) have due regard to the Landlord's representations as to the rent payable following a review under that sublease.
- (e) not vary the terms of any permitted sublease without the prior written consent of the Landlord (such consent not to be unreasonably withheld); and (f) procure that the rent payable under any permitted sublease is not commuted or made payable more than one quarter in advance, and shall not permit any reduction of that rent.

### 3.17.7 Registrations

Within 15 Business Days of any disposition of or relating to the Premises or any part of it, the Tenant shall provide the Landlord or its solicitors with a certified copy of the document evidencing or effecting such disposition and, on each occasion, shall pay to the Landlord its reasonable registration fee

### 3.17.8 Shared Spaces

The Tenant may share a Shared Space with third parties and PROVIDED THAT no relationship of Landlord and Tenant is created in relation to the Shared Space, the Tenant may, subject always to the provisions of the Second Schedule, enter into a licence to occupy with third parties in respect of part of the Shared Space

## 3.18 Indemnity

To be responsible for and to indemnify the Landlord against any claims proceedings or demands and all damages losses costs and expenses incurred thereby arising out of:

3.18.1 any accident loss or damage to persons or Premises occurring in or upon the Premises save to the extent that any such claims proceedings or demands arise in consequence of any negligence or default of the Landlord

3.18.2 any failure or neglect to perform the covenants and obligations on the part of the Tenant contained in this lease and/or any act neglect or default of the Tenant or any occupier of the Premises their servants agents and visitors whether authorised by this lease or not

**3.19 To inform Landlord of notices received**

As soon as practicable following receipt of notice (whether by advertisement or not) to give full particulars in writing to the Landlord of any permission notice order or proposal for a notice or order made given or issued by any government department local or public authority under or by virtue of any statutory powers affecting or likely to affect the Premises and if so required by the Landlord to produce such permission notice order or proposal for a notice or order to the Landlord and also (but to the extent only that compliance with such notice or order is not the responsibility of the Landlord pursuant to the provisions of this lease) at the Tenant's expense without delay to take all necessary steps to comply with any such notice or order

**3.20 Costs**

To pay all reasonable and proper costs and expenses (including solicitors' costs and surveyors' fees) properly incurred by the Landlord:

3.20.1 incidental to a notice under sections 146 and 147 of the Law of Premises Act 1925 (notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court) and

3.20.2 incidental to or arising out of any application by the Tenant for consent of the Landlord hereunder and in such instance those costs shall be reasonably and properly incurred) whether or not any such application proceeds to formal licence unless the Landlord is held by a Court to have been unreasonably withholding or delaying consent

**3.21 Light and air and other easements**

3.21.1 Not to prejudice the acquisition of any right of light for the benefit of the Premises by obstructing any window or opening or giving any acknowledgement that the right is enjoyed by consent or any other act or default of the Tenant

3.21.2 To preserve all rights of light and other easements enjoyed by the Premises and not to permit or suffer anyone to acquire any right of light or other easement or right over the Premises

3.21.3 As soon as the Tenant becomes aware of the same to give the Landlord notice if any easement enjoyed by the Premises is obstructed or any new easement affecting the Premises is made or attempted

**3.22 Articles of archaeological or historic interest**

To give written notice to the Landlord of the discovery of any object, relic or article of archaeological or historic interest unearthed or discovered on the Premises.

**3.23 Wiring Certificate**



Prior to the occupation of the Development to obtain a test and inspection certificate in relation to the Premises from an approved electrical contractor of the National Inspection Council for Electrical Installation stating that the wiring complies with BS7671 as amended (Institute of Electrical Engineers Wiring regulations) and to produce such test results and certificate to the Landlord on demand.

### **3.24 Costs of Lease**

To pay the Landlord's legal and surveyors costs in connection with the preparation and completion of this lease.

## **4. Landlord's covenants**

The Landlord hereby covenants with the Tenant that the Tenant paying the rents hereby reserved and performing and observing the covenants on the Tenant's part herein contained shall quietly hold and enjoy the Premises during the Term without interruption by the Landlord or any person rightfully claiming through under or in trust for the Landlord.

## **5. Insurance**

### **5.1 Tenant's insurance obligations**

The Tenant shall insure the Premises with an insurer of repute (with the interest of the Landlord as freehold owner of the Premises noted on the policy) (to the extent that insurance may ordinarily be arranged on reasonable terms and conditions and, subject to such exclusions excesses and limitations as may be imposed by the insurer and as are usual in the London insurance market at the time in respect of the insurance of premises of a similar nature to the Premises:

- (a) the Premises (including any Containers thereon from time to time) against loss or damage by the Insured Risks in a sum which represents the full replacement cost thereof (including but not limited to insurance cover for at least £200,000 towards the costs of site clearance) and
- (b) property owner's liability with a limit of indemnity of at least £10 million in respect of any one occurrence or such higher limit as the Landlord shall from time to time reasonably require and such other insurances as the Landlord may reasonably require

### **5.2 Reinstatement**

If the Premises (including any Containers thereon from time to time) or any part of them are damaged or destroyed by any of the Insured Risks then the Tenant shall:

- 5.2.1 use its reasonable endeavours to obtain any planning permission bye-law and other approvals which are necessary to enable the Premises to be rebuilt or reinstated and

- 5.2.2 (subject to the Tenant being able to obtain all necessary planning permissions licences approvals and consents) rebuild or reinstate the Premises or such parts thereof as shall have been so destroyed or damaged provided that the Tenant may rebuild or reinstate the Premises in a form which is not identical to the same immediately prior to such damage or destruction if the Premises as rebuilt or reinstated are of a similar standard and afford similar amenities to those of the Premises prior to such damage or destruction]

**5.3 Determination following serious damage**

If the Premises or Containers shall be so damaged by any of the Insured Risks so that the Premises cannot be used nor occupied for the Permitted Use in relation to either of the whole or a substantial part thereof the Landlord or the Tenant shall be entitled (on giving to the other party not less than three months' prior notice in writing) to determine the Term and at the expiration of such notice this demise and everything herein contained shall cease and determine (but without prejudice to any accrued right of action by either party against the other) and any insurance moneys shall belong to the Tenant

**5.4 Details of insurance**

The Tenant shall on request from the Landlord provide the Landlord with such details of the insurance policy and its terms and evidence of payment of the current premium as will enable the Landlord to know the full extent of the premises covered thereby the risks insured against and any exceptions conditions exclusions excesses or limitations to which the policy is subject and to satisfy itself that the interest of the Landlord as freehold owner of the Premises has been noted on the policy

**5.5 Vitiating of insurance**

Neither the Tenant nor the Landlord shall do anything which would or might prejudice or vitiate the insurance policy or policies or cause any premium thereunder to be increased

**5.6 Notification of Damage**

The Tenant shall inform the Landlord forthwith of the occurrence of damage to the Premises by any of the Insured Risks

**5.7 Insurers' requirements**

The Tenant (and where exercising rights under this Lease, the Landlord) shall comply with the requirements and lawful recommendation of the insurers

**6. Provisos**

It is hereby agreed by and between the parties hereto as follows

**6.1 Re-entry**

If any of the Rents hereby reserved or any part thereof shall at any time be unpaid for 21 days after becoming payable (whether formally demanded or not) or if any of the

covenants on the part of the Tenant herein contained shall not be performed or observed or if the Tenant shall make or enter into any arrangement composition or assignment with or for the benefit of creditors or shall enter into liquidation whether compulsory or voluntary or shall have a receiver of their assets or any part thereof appointed or if the Tenant shall suffer any distress or execution to be levied on its goods then and in any such case it shall be lawful for the Landlord at any time thereafter to re-enter upon the Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the rights of action of the Landlord in respect of any antecedent breach of any of the covenants on the part of the Tenant herein contained

**6.2 Notices**

This deed incorporates the regulations respecting notices contained in section 196 of the Law of Premises Act 1925 as amended by the Recorded Delivery Service Act 1962

**6.3 Contracts (Rights of Third Parties) Act 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Lease and unless specifically herein provided no person other than the parties to this Lease shall have any rights under it nor shall it be enforceable by any person other than the parties to it.

**6.4 Landlord as local authority**

The administration by and the rights and powers conferred upon the Landlord in its role as Local Authority will remain unaffected by the terms of this Lease and shall not constitute a derogation from any grant effected hereby.

**6.5 Articles of archaeological or historic interest**

All objects, relics or articles of archaeological or historic interest unearthed or discovered on the Premises shall be the absolute Premises of the Landlord.

**7. Landlord and Tenant Act 1954**

(a) On 8<sup>th</sup> March 2017 the Landlord served notice on the Tenant pursuant to the provisions of the 1954 Act Section 38A(3) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and on 19<sup>th</sup> March 2018 the Tenant made a simple/statutory declaration pursuant to Schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

(b) Pursuant to the provisions of the 1954 Act Section 38A(1) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, the parties agree that the provisions of the 1954 Act Sections 24–28 inclusive are to be excluded in relation to the tenancy created by this Lease.

**8. Containers**

For the avoidance of all doubt the Containers belong to the Tenant and (notwithstanding any connection to the Premises through Conducting Media) shall under no circumstances be treated as or deemed to be a fixture belonging to the Landlord provided that any Containers which are still on the Premises on the date falling 21 days after expiry or earlier termination of this lease shall become the property of the Landlord who shall have the right to deal with them as the Landlord considers appropriate.

**9. Agreement for Lease**

It is hereby certified that there is no agreement for lease to which this lease gives effect.

In witness whereof this lease has been executed by the parties as a deed the day and year first above written

## **The First Schedule**

### **Part 1**

#### **The Rights**

1. The right in common with the Landlord and all other persons having a like right (but subject to temporary interruption for repair alteration or replacement) to the free passage of water, soil, sewage, gas and electric current through any Conducting Media running to and from the Premises from the Landlord's Premises

In exercising any of the rights specified in this part of this Schedule the Tenant or the person or persons exercising the right shall:

- (a) cause as little damage disturbance or inconvenience as reasonably practicable to the Landlord or any occupier or user of any part of the adjoining land
- (c) make good as soon as reasonably practicable and to the reasonable satisfaction of the Tenant any damage caused to the Site

### **Part 2**

#### **Rights reserved to the Landlord and others authorised by it**

1. The right in common with the Tenant and all other persons having a like right (but subject to temporary interruption for repair alteration or replacement) to the free passage of water, soil, sewage, gas and electric current through any Conducting Media on, within or under the Premises running to and from the Landlord's Premises
2. The right to use develop rebuild extend increase alter or reconstruct the Landlord's Premises for such purpose to such extent and generally in such manner as they shall think fit
3. Rights of entry to the Premises in the manner and for the purposes of which the Tenant covenants in clauses 3.7 and 3.8 to permit such entry.
4. The right to erect scaffolding on the Landlord's Premises notwithstanding that this may cause disturbance or interference to the Tenant or any occupier of the Premises

In exercising any of the rights specified in this part of this Schedule the Landlord or the person or persons exercising the right shall:

- (a) so far as practicable comply with any reasonable requirements of the Tenant in respect of the security of the Premises
- (b) cause as little damage disturbance or inconvenience as reasonably practicable to the Tenant or any occupier or user of any part of the Premises and
- (c) make good as soon as reasonably practicable and to the reasonable satisfaction of the Tenant any damage caused to the Premises

**Second Schedule**  
**Additional Rent**

**1. INTERPRETATION**

In this Schedule, the following words and expressions have the following meanings:

**Records:** the keeping of such financial information is reasonably and properly required and agreed between the Landlord and Tenant (both acting reasonably and in good faith) in order to accurately ascertain and demonstrate the Profit.

**Profit Certificate:** a certificate agreed between the Landlord and Tenant or if such agreement cannot be reached as signed by a professionally qualified independent auditor or accountant appointed by the Tenant accurately certifying the Profit for the relevant Profit Period.

**2. GROSS INCOME**

2.1 The Gross Income shall be the total amount of all sums of money and the value of any other consideration received or receivable (whether rent, licence fee, hire fee or otherwise) for all:

- (a) Permitted Underletting, subleases, licence agreements, hire agreements granted or entered into
- (b) goods sold, hired, leased or otherwise disposed of;
- (c) services sold or performed; and
- (d) business of whatever nature carried out;

in whole or in part at, in or from the Premises by the Tenant or any other person on its behalf.

2.2 For the avoidance of doubt, the amounts specified in *paragraph 2.1* shall include those from:

- (a) orders accepted, received or processed at, or originating from the Premises whether in person, by post, telephone, e-mail, internet or any other means including:
  - (i) those wholly or partly fulfilled or performed at, or from, another location;
  - (ii) those where payment is made in whole or in part to a person other than the Tenant;
  - (iii) those obtained or taken at another location by persons based at, or operating from the Premises; and
  - (iv) those made by vending machines and electronic or mechanical devices situated at the Premises.
- (b) deposits not refunded to customers;
- (c) charges made by the Tenant for delivery, insurance or postal services in relation to an order;
- (d) sales of service contracts, guarantees and extended warranties;

- (e) the full sale price of any goods or services sold:
    - (i) where payment is made fully or partly in kind or by way of exchange of goods;
    - (ii) to an employee or employee's family, disregarding any discount that may be allowed by the Tenant; and
- 2.3 on a credit, instalment, hire purchase or lease purchase basis, even though the Tenant may not yet have received full payment.
- 2.4 The following sums shall not be included in the Gross Income referred to in paragraph 2.1:
  - (a) all VAT and excise or sales tax directly imposed on and paid or accounted for by the Tenant in relation to the supply of goods and services at, in, or from the Premises;
  - (b) any income earned at or from the Premises by persons other than the Tenant or companies within the same Group as the Tenant; and
  - (c) any cash refund or credit given to a customer in respect of returned goods or unsatisfactory services to the extent only that the amount of the cash refund or credit does not exceed the amount included in the Gross Income in respect of the sale of those goods or services;
  - (d) any income accrued at or from the Premises in respect of goods and services supplied to the Landlord.

### **3. EXPENSES**

The Expenses shall be the total amount of any costs incurred by the Tenant in carrying out the business of the Permitted Use on the Premises relating to trading costs, administrative expenses and interest on any loans relating to that business and any other deductions approved in writing by the Landlord.

### **4. PAYMENT OF ADDITIONAL RENT**

- 4.1 Within 10 working days after each Account Date, the Tenant shall deliver a Profit Certificate to the Landlord.
- 4.2 On each respective Rent Payment Date the Tenant shall pay to the Landlord the Additional Rent for the relevant immediately preceding Profit Period.

### **5. LATE DELIVERY OF PROFIT CERTIFICATE**

- 5.1 If the Tenant shall fail to deliver a Profit Certificate to the Landlord by the due date, the following provisions shall apply:
  - (a) the Tenant shall immediately pay on account of the Additional Rent for that Profit Period the sum (if any) that is equivalent to 25% of the Basic Rent for that Profit Period; and

(b) within 20 working days after delivery of the Profit Certificate to the Landlord, the Tenant shall pay:

- (i) the balance of the Additional Rent due in accordance with *paragraph 2* of this Schedule for the Profit Period covered by that Profit Certificate after deduction of any instalments paid on account under *paragraph 5.1(a)*; and
- (ii) interest calculated in accordance with *clause 3.4* on such balance of Additional Rent for the period from the date that the Profit Certificate should have been delivered, up to and including the date of actual payment of such balance.

5.2 If the amounts of Additional Rent paid on account by the Tenant under *paragraph 5.1(a)* shall exceed the Additional Rent that is due for that Profit Period, the Landlord shall give credit for such overpayment against the next payment by the Tenant on account of Additional Rent.

## **6. END OF THE TERM**

6.1 On or before the last day of the Term, the Tenant shall pay to the Landlord on account of the Additional Rent for the last Profit Period the sum that is equivalent to 75% of the Basic Rent for that Profit Period.

6.2 Within 20 working days after the end of the Term, the Tenant shall deliver a Profit Certificate to the Landlord and pay the balance (if any) of the Additional Rent due in accordance with *paragraph 2* of this Schedule for the last Profit Period after deduction of any instalments paid on account under *paragraph 6.1*.

6.3 If the Additional rent payable for the last Profit Period is less than any instalments paid by the Tenant on account under *paragraph 5.1*, the Landlord shall refund to the Tenant such overpayment plus VAT within 14 days of receipt of the Profit Certificate supplied under *paragraph 5.2*.

## **7. TENANT TO KEEP RECORDS**

7.1 The Tenant shall keep the Records throughout the Term and for 12 months after the end of the Term.

7.2 The Tenant shall make the Records available for inspection upon reasonable request at any time by the Landlord, its accountants or authorised agents.

7.3 The Landlord may, in its discretion, arrange for the Records in respect of any Profit Period to be audited by a professionally qualified independent auditor or accountant appointed by the Landlord.

7.4 If the audit commissioned by the Landlord reveals an underpayment of Additional Rent, the Tenant shall, within 14 days after receiving written demand, pay to the Landlord:

- (a) the underpayment;



- (b) interest calculated in accordance with *clause 3.4* on such underpayment for the period from the due date for delivery of the Profit Certificate, up to and including the date of actual payment of the underpayment; and
- (c) the full cost of the audit commissioned by the Landlord.

## **8. CONFIDENTIALITY**

- 8.1 The Landlord undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Tenant, except as permitted by paragraph 8.2.
- 8.2 The Landlord may disclose the Tenant's confidential information:
  - (a) to the Landlord's employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Landlord's rights and obligations under this lease;
  - (b) as may be required by law, court order or any governmental or regulatory authority; and
  - (c) to such extent as may be necessary in connection with a proposed disposition of the Landlord's interest in the Building.
- 8.3 The Landlord shall not otherwise use the Tenant's confidential information for any purpose other than to perform the Landlord's rights and obligations under this lease.

## **9. DISPUTES**

If any question or dispute shall arise between the parties as to the amount of the Profit or the Additional Rent that is due, the question or dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity, the arbitrator shall be appointed on either party's request by the President of the Institute of Chartered Accountants in England and Wales. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

Executed as a Deed by  
affixing The Common Seal of the Council of  
the City of York in the presence of:

Authorised signatory for Assistant Director of  
Legal and Governance

Executed as a deed by  
Spark York C.I.C.  
acting by a director and its Secretary or  
by two directors:

Director

Director/Secretary